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THE
DECLARATION
OF IOHN PYM Esquire,
UPON

THE WHOLE MATTER
of the Charge of *High Treason*, against

THOMAS
EARLE OF STRAFFORD,

APRIL 12. 1641.

WITH
AN ARGUMENT of Law, concerning
the Bill of *Attainder of high Treason* of the said
EARLE OF STRAFFORD,

Before a Committee of both houses of Parliament,
in WESTMINSTER Hall,

By Mr. St. Iohn his Majesties Solicitor Generall,
on Thursday, April. 29. 1641.

Both Published by Order of the Commons House.

Anno Domini. 1641.

(70)

DECLARATION

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JUNE 1, 1918

THOMAS

BARRETT OF STRAFFORD

ATTORNEY AT LAW

WITH

STATEMENT OF LAWYERS CONCERNING
THE BILL OF AMENDMENT OF THE LAW

TABLE OF STRAFFORD

THE LAWYERS' COMMITTEE OF THE HOUSE OF COMMONS
IN WESTMINSTER HALL

BY M. S. JONES, M.A., Solicitor General
CONTAINING, WITH, 20-3-64

Bill Published by Order of the Commons House

Anno Domini 1844

THE
S P E E C H
OR
DECLARATION
OF
JOHN PYM, Esq. &c.

MY LORDS,



Any dayes have beene spent in maintenance of the Impeachment of the Earle of Strafford, by the House of Commons, whereby hee stands charged with High Treason: And your Lordships have heard his Defence with Patience, and with as much favour as Justice would allow: We have passed through our Evidence, and the Result of all this is, that it remains clearly proved, That the Earle of Strafford hath indeavoured by his words, actions, and counsels, to subvert the Fundamentall Lawes of England and Ireland, and to introduce an Arbitrary and Tyrannicall Government.

This is the envenomed Arrow for which hee inquired in the beginning of his Replication this day, which hath infected all his Blood: This is that Intoxicating Cup, (to use his owne Metaphor) which hath tainted his Iudgement, and poisoned his Heart:

From hence was infused that Specificall Difference which turned his Speeches, his Actions, his Counsels into Treason; Not Cumulative, as he exprest it, as if many Mildemeanours could make one Treason; but Formally and Essentially. It is the End that doth enforme Actions, and doth specificate the nature of them, making not onely criminall; but even indifferent words and actions to be Treason, being done and spoken with a Treasonable intention.

That which is given to mee in charge, is, to shew the quality of the offence, how painous it is in the nature, how mischievous in the effect of it, which will best appeare if it be examined by that Law, to which he himselfe appealed, that universall, that supreme Law, *Salus populi*: This is the Element of all Lawes, out of which they are deriyed, the End of all Lawes, to which they are designed, and in which they are perfected. How farre it stands in opposition to this Law, I shall endeavour to shew in some Considerations which I shall present to your Lordships, all arising out of the Evidence which hath beene opened.

1. The first is this: It is an offence comprehending all other offences; here you shall finde severall Treasons, Murthers, Rapines, Oppressions, Perjuries.

The Earth hath a Seminary vertue, whereby it doth produce all Herbs and Plants, and other Vegetables: There is in this Crime, a Seminary of all Evills hurtfull to a State; and if you consider the Reasons of it, it must needs be so: The Law is that which puts a difference betwix good and evill, betwix just and unjust; If you take away the Law, all things will fall into a confusion, every man will become a Law to himselfe, which in the depraved condition of humane nature, must needs produce many great enormities: Lust will become a Law, and Envy will become a Law, Covetousnesse and Ambition will become Lawes; and what dictates, what decisions such Lawes will produce, may easily be discerned in the late Government of Ireland: The Law hath a power to prevent, to restraints, to repaire evils; without this, all kind of mischiefs and disorders will break in upon a State.

It is the Law that doth intitle the King to the Allegiance and service of his people, it intitles the people to the protection and justice of the Kings. It is God alone who subsists by himselfe, all other things subsist in a mutuall dependence and relation. Hee was a wise man that said, that the King subsisted by the field that is tilled: It is the labour of the people that supports the Crowne: If you take away the protection of the King, the vigour and cheerefulnesse of Allegiance will be taken away though the Obligation remaine.

The Law is the Boundary, the Measure betwixt the Kings Prerogative, and the peoples Liberty: Whiles these move in their owne Orbe, they are a support and security to one another; The Prerogative a cover and defence to the Liberty of the people, and the people by their Liberty are enabled to be a foundation to the Prerogative; but if these bounds be so removed, that they enter into constellation and conflict, one of these mischiefs must needs ensue: If the Prerogative of the King overwhelme the Liberty of the people, it will be turned into Tyranny; if Liberty undermine the Prerogative, it will grow into Anarchy,

The Law is the safeguard, the custody of all private interest: Your Honours, your Lives, your Liberties and estates are all in the keeping of the Law; without this, every man hath a like right to any thing, and this is the condition into which the Irish were brought by the Earle of Strafford: And the reason which hee gave for it, hath more mischiefe in it than the thing it selfe, They were a Conquered Nation. There cannot be a word more pregnant & fruitfull in Treason, than that word is: There are few Nations in the world that have not bin conquered; and no doubt but the Conqueror may give what Lawes he please to those that are conquered: But if the succeeding Pactis and Agreements doe not limit and restraints that right, what people can be secure? England hath been conquered, and Wales hath been conquered, and by this reason will be in little better case than Ireland: If the King by the Right of a Conqueror gives Lawes to his people, shall not the people by the same reason be restored to the right of the conquered, to recover their liberty if they can? What can be more hurtfull, more pernicious to both, then such propositions as these?

And in these particulars is determined the first Consideration.

2. The second Consideration is this : This Arbitrary power is dangerous to the Kings Person, and dangerous to his Crowne : It is apt to cherish ambition, usurpation, and oppression in great men, and to beget sedition and discontent in the People ; and both these have beene, and in reason must ever be causes of great trouble and alteration to Princes and States.

If the Histories of those Easterne Countries be perused, where Princes order their affaires according to the mischievous principles of the E. of Strafford, loose and absolved from all Rules of Government, they will be found to be frequent in combustions, full of Massacres, and of the tragick ends of Princes. If any man shall looke into our owne Stories, in the times when the Lawes were most neglected, hee shall finde them full of Commotions, of Civill distempers ; whereby the Kings that then reigned, were alwayes kept in want and distresse ; the people consumed with Civill wars ; and by such wicked counsels as these, some of our Princes have beene brought to such miserable ends, as no honest heart can remember without horrore and earnest Prayer, that it may never be so againe.

3. The third Consideration is this, The subversion of the Lawes ; And this arbitrary power, as it is dangerous to the Kings Person and to his Crowne, so is it in other respects very prejudiciall to his Majesty in his Honour, Profit, and Greatnesse ; and yet these are the gildings and paintings that are put upon such counsels ; These are for your Honour, for your Service ; whereas in truth they are contrary to both : But if I shall take off this varnish, I hope they shall then appeare in their owne native deformity, and therefore I desire to consider them by these Rules.

It cannot be for the Honour of a King, that his sacred authority should be used in the practise of injustice and oppression ; that his Name should be applyed to patronize such horrid crimes, as have beene represented in Evidence against the Earle of Strafford ; and yet how frequently, how presumptuously his Commands ; his Letters have beene vouch'd throughout the course of this Defence, your Lordships have heard. When the
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Indges doe justice, it is the Kings Iustice, and this is for his honour, because hee is the Fountaine of Iustice: but when they doe iniustice, the offence is their owne: But those Officers and Ministers of the King, who are most officious in the exercise of this Arbitrary power; they doe it commonly for their advantage; and when they are questioned for it, then they fly to the Kings interest, to his direction: And truly my Lords, this is a very unequall distribution for the King, that the dishonour of evill courses should be cast upon him, and they to have the advantage.

The prejudice which it brings to him in regard of his profit, is no lesse apparant: It deprives him of the most beneficiall, and most certaine Revenue of his Crowne, that is, the voluntary aids and supplies of his people; his other Revenues, consisting of goodly Demeanes, and great Manors, have by Grants beene alienated from the Crowne, and are now exceedingly diminished and impaired: But this Revenue it cannot be sold, it cannot be burdened with any Pensions or Annuities, but comes intirely to the Crowne. It is now almost fiftene yeeres since his Majesty had any assistance from his people; and these illegall wayes of supplying the King were never prest with more violence, and art, then they have beene in this time; and yet I may upon very good grounds asseme, that in the last fiftene yeeres of Queene Elizabeth, shee received more by the Bounty and Affection of her Subjects, then hath come to His Maiesties Cofters by all the inordinate and rigorous courses which have been taken. And as those Supplies were more beneficiall in the Receipt of them, so were they like in the use and employment of them.

Another way of prejudice to his Maiesties profit, is this: Such Arbitrary courses exhaust the people, and disable them, when there shall be occasion, to give such plentifull supplies, as otherwise they would doe. I shall need no other proofe of this, then the Irish Government under my L. of Strafford, where the wealth of the kingdome is so consumed by those horrible exactions and burdens, that it is thought the Subsidies lately granted will amount to little more then halfe the proportion of the last Subsidies. The two former wayes are hurtfull to the Kings profit,

fit, in that respect which they call *Lucrum Cessans*, by diminishing his receipts; But there is a third, fuller of mischief, and it is in that respect which they call *Darorum emergens*, by increasing his Disbursements: Such irregular and exorbitant attempts upon the Liberties of the people, are apt to produce such miserable distractions and distempers, as will put the King and Kingdomes to such vast expences and losses in a short time, as will not be recovered in many yeeres: Wee neede not goe farre to seeke a prooffe of this, these two last yeares will bee a sufficient evidence, within which time I assure my selfe, it may be proved, that more Treasure hath beene wasted, more losse sustained by his Maiesty and his Subjects, then was spent by Queene Elizabeth in all the War of Tyrone, and in those many brave Attempts against the King of Spaine, and the royall assistance which shee gave to France, and the Low-Countries, during all her Reigne.

As for Greatnesse, this Arbitrary power is apt to hinder and impair it, not onely at home, but abroad. A kingdome is a society of men conioyned under one Government, for the common good: The World is a societie of kingdomes and States. The Kings greatnesse consists not onely in his Dominion over his Subjects at home, but in the influence which he hath upon States abroad: That hee should be great even among Kings, and by his wisdom and authoritie so to incline and dispose the affaires of other States and Nations, and those great events which fall out in the World, as shall be for the good of Mankind, and for the peculiar advantage of his owne people. This is the most glorious, and magnificent greatnesse to be able to relieve distressed Princes, to support his owne friends and Allies, to prevent the ambitious designs of other Kings, and how much this Kingdome hath beene impaired in this kinde, by the late mischievous counsels your Lordships best know, who at a neerer distance, and with a more cleare sight, doe apprehend these publique and great affaires, then I can doe. Yet thus much I dare boldly say, that if his Maiestie had not with great wisdom and goodnesse forsaken that way wherein the Earle of Strafford had put him, wee should within a short time have beene brought into that miserable condition, as to have beene uselesse to our friends, contemptible to our enemies;

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and incapable of undertaking any great Designs either at home or abroad.

A fourth Consideration is, That this Arbitrary and Tyrannical Power, which the Earle of Strafford did exercise, his own person, and to which he did advise his Majesty, is inconsistent with the Peace; the Wealth, the Prosperity of a Nation; It is destructive to Justice, the Mother of Peace; to Industry, the spring of Wealth; to Valour, which is the active vertue, whereby the prosperity of a Nation can onely be procured, confirmed and enlarged.

It is not onely apt to take away Peace, and to intangle the Nation with Warre, but doth corrupt Peace, and puts such malignity into it, as produceth the Effects of warre. We need seeke no other prooffe of this, but the Earle of Straffords Government; where the Irish, both Nobility and others, had as little security of their Persons or Estates in this peaceable time, as if the kingdom had beene under the rage and fury of warre.

And as for Industry and Valour, who will take paines for that, which when hee hath gotten, is not his owne? Or who fight for that wherein he hath no other interest, but such as is subject to the will of another? The Ancient encouragement amongst them to defend their Countries was this, That they were to hazard their Person, pro Aris & Focis, for their Religion, and for their Houses; But by this Arbitrary way which was practised in Ireland, and counselled here, no man had any certainty, either of Religion, or of his House, or any thing else to be his owne. But besides this, such Arbitrary courses have an ill operation upon the courage of a Nation, by embasing the hearts, of the people. A servile condition doth for the most part beget in men a slavish temper and disposition. Those that live so much under the Whip and the Pillory, and such servile Engines, as were frequently used by the Earle of Strafford, they may have the dregs of valor, fullness, and stubbornness, which may make them prone to Munitions and contentions; but those Noble and gallant actions, which put them on brave Designs and Attempts for the preservation or intregement of a kingdom, they are hardly capable of. Shall it be Treason to embase the Kings Coyne, though but a piece

of twelve pence, or six pence, and must it not needs be the effect of a greater Treason, to embale the spirits of his Subjects, and to set a stamp and Character of servitude upon them, whereby they shall be disabled to doe any thing for the service of the King or Common wealth?

The fifth Consideration is this, That the exercise of this Arbitrary Government, in times of sudden danger, by the invasion of an enemy, will disable his Majesty to preserve himselfe and his Subjects from that danger. This is the only pretence by which the Earle of Strafford, and such other mischievous Counsellors would induce his Majesty to make use of it; and if it be usit for such an occasion, I know nothing that can be alledged in maintenance of it.

When warre threatens a Kingdome by the coming of a forraigne Enemy, it is no time then to discontent the people, to make them weary of the present Government and more inclinable to change; The supplies which are to come in this way, will be unready, uncertain; there can be no assurance of them, no dependence upon them, either for time or proportion: And if some money be gotten in such a way, the Distractions, Divisions, Distempers, which this course is apt to produce, will be more prejudiciall to the publique safety, than the supply can be advantageous to it; and of this we have had sufficient experience the last Summer.

The sixt, That this crime of subverting the Lawes, and introducing an Arbitrary and Tyrannicall Government, is contrary to the Pact and Covenant betwixt the King and his people. That which was spoken of before, was the legall union of Allegiance and Protection: this is a personall union by mutuall agreement and stipulation, confirmed by oath on both sides: The King and his people are obliged to one another in the nearest relations; He is a Father, and a child is called in Law, Pater Patris: He is the Husband of the Common wealth, they have the same interests, they are inseparable in their condition, be it good or evil; He is the Head, they are the Body, there is such an incorporation as cannot be dissolved without the destruction of both.

When

When Justice Thorpe, in Edward the third's time, was by the Parliament condemned to death for Bribery, the reason of that judgement is given, because he had broken the Kings Oath; not that he had broken his owne oath, but that hee had broken the Kings oath, that solemne and great obligation, which is the security of the whole Kingdome: If for a Iudge to take a small summe in a private cause, was adjudged Capital how much greater was this offence, whereby the Earle of Strafford hath broken the Kings Oath in the whole course of his Government in Ireland, to the prejudice of so many of his Majesties Subjects, in their Lives, Liberties, and Estates, and to the danger of all the rest :

The Doctrine of the Papists, *Fides non est servanda cum Hæreticis*, is an abominable Doctrine; yet that other Tenet more peculiar to the Jesuites is more pernicious, whereby Subjects are discharged from their oath of Allegiance to their Prince whensoever the Pope please; This may be added to make the third no lesse mischievous and destructive to humane society, then either of the rest, that the King is not bound by that oath which he hath taken to observe the Lawes of the Kingdome, but may when hee sees cause, lay Taxes and Burthens upon them without their consent, contrary to the Lawes and Liberties of the Kingdome. This hath beene preached and published by divers; And this is that which hath beene practised in Ireland by the Earle of Strafford, in his Government there, and endeavoured to be brought into England, by his Council here.

The seventh is this; It is an offence that is contrary to the end of Government; The end of Government was to prevent oppressions, to limit and restrain the excessive power and violence of great men, to open the passages of Justice with indifferency to wards all; This Arbitrary power is apt to induce and encourage all kinde of insolencies.

Another end of Government, is to preserve men in their Estates, to secure them in their Lives and Liberties; but if this Designe had taken effect, and could have beene settled in England, as it was practised in Ireland, no man would have had more certainty in his owne, then power would have allowed him: but these two have been spoken of before, there are two behind more important, which have not yet beene touched.

It is the end of Government, that vertue should be cherish'd, vice suppress'd; but where this Arbitrarie and unlimited power is set up, a way is open not onely for the securitie, but for the advancement and incouragement of evill; Such men as are apt for the execution and maintenance of this Power, are onely capable of preferment; and others who will not be instruments of any unjust commands, who make a conscience to doe nothing against the Lawes of the Kingdome, and Liberties of the Subject, are not onely not passable for imployment, but subject to much jealousie and danger.

It is the end of Government, that all accidents and events, all Counsels and Designs should be improved to the publike good: But this Arbitrarie Power is apt to dispose all to the maintenance of it selfe. The wisdom of the Councell Table, the Authoritie of the Courts of Iustice, the industrie of all the Officers of the Crowne have bene most carefullie exercised in this; the Learning of our Divines, the jurisdiction of our Bishops have bene moulded and disposed to the same effect, which though it were begun before the E. of Straffords Imployment, yet it hath bene exceedingly furthered and advanced by him.

Under this colour and pretence of maintaining the Kings Power and Prerogative manie dangerous practices against the peace and safetie of this Kingdome have bene undertaken and promoted. The increase of Poperie and the favours and incouragement of Papists have bene, and still are a great grievance and danger to the Kingdome: The Innovations in matters of Religion, the usurpations of the Clergie, the manifold burdens and taxations upon the people, have bene a great cause of our present distempers and disorders; and yet those who have bene chiefe Furtherers and Actors of such Mischiefes, have had their Credit and Authority from this, That they were forward to maintaine this Power. The E. of Strafford had the first rife of his greatnesse from this, and in his Apologie and Defence, as your Lordships have heard, this hath had a maine part.

The Royall Power and Majestie of Kings, is most glorious in the

the prosperitie and happinesse of the people, the perfection of all things consists in the end for which they were ordained, God onely is his owne end, all other things have a further end beyond themselves, in attaining whereof their owne happinesse consists: If the meanes and the end be set in opposition to one another, it must needs cause an impotency and defect of both.

The eight Consideration is, The vanitie and absurdity of those excuses and justifications which he made for himselfe, whereof divers particulars have been mentioned in the course of his Defence.

1. That he is a Counsellor, and might not be questioned for any thing which he advised according to his conscience; The ground is true, there is a liberty belongs to Counsellors, and nothing corrupts Counsels more then Fear; Hee that will have the priviledge of a Counsellor, must keepe within the iust bounds of a Counsellor; those matters are the proper subiects of Counsell, which in their times and occasions, may be good or beneficiall to the King or Common-wealth; But such treasons as these, the subversion of the Lawes, violation of Liberties, they can never be good, or iustificable by any circumstance, or occasion; and therefore his being a Counsellor, makes his fault much more hainous, as being committed against a greater Trust, and in a way of much mischief and danger, lest his Maiesties conscience and iudgement (upon which the whole course and frame of his Government doe much depend) should be poysoned and infected with such wicked principles and designes: And this hee hath endeavoured to doe, which by all Lawes, and in all times hath in this Kingdome beene reckoned a Crime of an High Nature.

2. Hee labours to interest your Lordships in his cause, by alledging, It may be dangerous to your selves, and your Posterity, who by your birth are fittest to be neare his Maiesty, in places of trust and Authority, if you should be subiect to be questioned for matters delivered in Counsell. To this was answered, that it was hoped their Lordships would rather Labour to secure themselves, and their posteritie, in the exercise of their virtues, then of their vices, that so they might together

with their owne honour and greatnesse, preserve the honour and greatnesse, both of the King and kingdom.

3. Another excuse was this, that whatsoever he hath spoken was out of a good intention; Sometimes good and evil, truth and falshood lie so neare together, that they are hardly to be distinguished: Matters hurtfull and dangerous may be accompanied with such circumstances as may make it appeare usefull and convenient, and in all such cases, good intention will justifie evill Counsell; But where the matters propounded are evill in their owne nature, such as the matters are wherewith the Earle of Strafford is charged, to breake a publike faith, to subvert Laws and Government, they can never be justified by any intentions, how speeches or good soever they be pretended.

4. Hee alledged it was a time of great necessitie and danger, when such counsells were necessarie for preservation of the State. Necessitie hath beene spoken of before, as it relates to the Cause; now it is considered as it relates to the Person: if there were any necessitie, it was of his owne making; he by his evill counsell had brought the King into a necessitie, and by no Rules of Justice, can be allowed to gaine this advantage by his owne fault, as to make that a ground of his justification, which is a great part of his offence.

5. He hath often insinuated this, That it was for his Majesties service in maintenance of that Sovereigne Power with which he is intrusted by God for the good of his people. The Answer is this, No doubt but that Sovereigne Power wherewith his Majestie is intrusted for the publike good, hath many glorious effects, the better to enable him thereunto; But without doubt this is none of them, That by his owne will he may lay any Taxe or Imposition upon his people without their consent in Parliament. This hath now been five times adjudged by both Houses: In the Case of the Loanes, In condemning the Commission of Excise, In the Resolution upon the Saving offered to be added to the Petition of Right, In the sentence against Manwaring, and now lately, In condemning the Shipmoney; And if the Sovereigne power of the King can produce no such effect as this, the Allegation of it is an Aggravation, and no Diminution of his offence,

offence, because thereby he doth labour to interest the King against the just grievance and complaint of the People.

6. This Counsell was propounded with divers limitations, and Provisions; for securing and repairing the libertie of the people. This implies a contradiction to maintaine an Arbitrary and absolute Power, and yet to restrain it with limitations, and provisions; for even those limitations and provisions will be subject to the same absolute Power, and to be dispensed in such manner, and at such time, as it selfe shall determine: let the grievances and oppressions be never so heavy, the Subject is left with out all remedie, but at his Majesties owne pleasure.

7. He alledgeth, they were but words, and no effect followed. This needs no answer, but that the miserable distempers into which he hath brought all the three Kingdomes, will be evidence sufficient that his wicked Counsels have had such mischievous effects within these two or three last yeeres, that many yeeres peace will hardly repaire those losses, and other great mischiefs, which the Common wealth hath sustained.

These excuses have been collected out of the severall parts of his Defence; perchance some others are omitted, which I doubt not have beene answered by some of my Collegues, and are of no importance, either to perplex or to hinder your Lordships judgement, touching the hainousnesse of this Crime.

The ninth Consideration is this, That if this be Treason, in the nature of it, it doth exceed all other Treasons in this, that in the Designe, and endeavour of the Author, it was to be a constant & permanent Treason; other Treasons transient, as being confinde within those particular Actions and Proportions wherein they consist, and those being past, the Treason ceaseth.

The Powder-treason was full of horror and malignity, yet it is past many yeeres since. The murder of that Magnanimous and glorious King Henry the fourth of France, was a great and horrid Treason; And so were those manifold attempts against Our Elizabeth of blessed memory; but they are long since past, the Detestation of them onely remaines in Histories, and in the minds

minds of men; and will ever remaine; But this Treason, if it had taken effect, was to be a standing, perpetuall Treason, which would have beene in continuall act, not determined within one time or age, but transmitted to Posterity, even from one generation to another.

10.

The tenth consideration is this, That as it is a Crime odious in the nature of it, so it is odious in the judgement and estimation of the Law; to alter the settled frame and constitution of Government, is Treason in any estate. The Lawes whereby all other parts of a Kingdome are preserved should be very vaine and defective, if they had not a power to secure and preserve themselves.

The forfeitures inflicted for Treason by our Law, are of Life, Honor, and Estate, even all that can be forfeited and this Prisoner having committed so many Treasons, although he should pay all these forfeitures, will be still a Debtor to the Common-wealth: Nothing can be more equall, then that hee should perish by the Justice of that Law which hee would have subverted: Neither will this be a new way of blood; There are markes enough to trace this Law to the very originall of this Kingdome: And if it hath not beene put in execution, as he allegeth, this 240. yeers, it was not for want of Law, but that all that time hath not bred a man bold enough to commit such Crimes as these; which is a circumstance much aggravating his offence, and making him no whit less liable to punishment, because he is the onely man that in so long a time hath ventured upon such a Treason as this.

It belongs to the charge of another, to make it appeare to your Lordships, that the Crimes and offences proved against the Earle of Strafford, are High Treason by the Lawes and Statutes of this Realme, whose learning and other abilities are much better for that service. But for the time and manner of performing this, we are to resort to the Direction of the House of Commons, having in this which is already done, dispatched all those instructions which we have received; and concerning further proceedings, for clearing all Questions and Objections in Law, your Lordships will heare from the House of Commons in convenient time.

F I N I S.

